



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HAVERHILL COOPERATIVE EDUCATION :
 ASSOCIATION, NEA-NEW HAMPSHIRE :
 :
 Complainant :
 v. :
 :
 NORMAN H. MULLEN, SUPERINTENDENT, :
 SAU #23 :
 :
 Respondent :

CASE NO. T-0232:4

DECISION NO. 83-27

APPEARANCES

Representing Haverhill Cooperative Education Association, NEA-New Hampshire
 John Fessenden

Representing Norman H. Mullen, Superintendent
 Stephen Samaha, Esq.

Also in attendance
 Charles E. Meyers
 Norman H. Mullen
 Barbara Uresky

BACKGROUND

This is an unfair labor practice charge brought by the Haverhill Cooperative Education Association, NEA-New Hampshire against the school superintendent Norman Mullen. The union maintains that Superintendent Mullen committed an unfair labor practice violating RSA 273-A:5 (a), (c), and (e) by ordering teachers of the Woodsville Elementary School to start bus duty 15 minutes earlier on December 7, 1982. He did not discuss this with any employees' organization before giving his order and has refused since to discuss the matter with them. The union maintains that the past practice is clear that elementary school teachers report at 8:00 a.m. and not at 7:45 a.m. for any particular reason. This was a unilateral change in the conditions of employment says the union and the superintendent has failed to discuss this or negotiate this particular change in the employment practice.

The superintendent of schools answers the charge by pointing out that the master contract between the Haverhill Cooperative School Board and Haverhill Cooperative Teachers Association was negotiated in good faith and specifically fails to cover the hours of employment. The superintendent further states that although the teachers at Woodsville Elementary School had been starting bus duty at 8:00 prior to December 7, 1982 Superintendent Mullen instructed the principal of the Woodsville Elementary School to change the commencement of bus duty from 8:00 a.m. to 7:45 a.m. as a result of fighting among students at the elementary school between the time that buses arrive at 7:45 a.m. to the time the teachers arrived at 8:00 a.m. and more specifically the result of a particular incident which

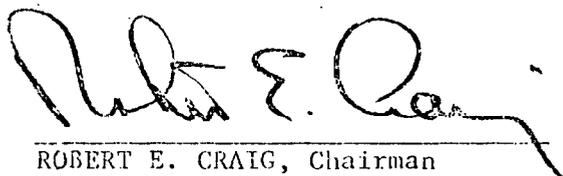
occurred on December 5, 1982 when a 9th grade student assaulted a 7th grade student. The superintendent further answers that in other elementary school situations teachers report to bus duty at 7:45 a.m. and that because of the potential danger to students he was forced to take action. Superintendent Mullen further states that he's insisted that any and all communication with Mr. Fessenden be directed to him in writing, and Mr. Mullen is willing to communicate with Mr. Fessenden on that basis concerning this matter.

FINDINGS OF FACT AND RULINGS OF LAW

At hearing it became clear that there has been some discussion of this problem surrounding negotiations between the two parties but that no resolution of the difficulty emerged. It also became clear that this case is not a question of punishing any particular teacher or school but an attempt on the part of the superintendent to deal with an imminent problem. The question arises as to whether or not this particular difficulty is, 1) a matter of negotiation or, 2) resolvable under the grievance procedure in the contract. Since the change in the hours of the teachers in school is most certainly a condition of employment then there is no question but that this is a mandatory subject of negotiation. Since this is the case, negotiable items must be negotiated and if either party refuses to negotiate such items they have recourse to the grievance procedure contained within the contract on the basis that a grievance for refusal to negotiate is possible under the terms of the contract.

DECISION

The PELRB rules that the problem is resolvable under the grievance procedure of the contract and that both parties are ordered to follow the terms of the contract and the unfair labor practice complaint is hereby dismissed.



ROBERT E. CRAIG, Chairman

Signed this 7th day of July, 1983

By unanimous vote. Chairman Craig presiding, members James Anderson and Seymour Osman present and voting. Also present, Evelyn C. LeBrun, Executive Director.